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August 13, 2020

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk / Executive Director
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

Re: Application of Blue Granite Water Company for Approval to Adjust Its Rate Schedules and Increase Rates
Docket No. 2019-290-WS

Actions in Response to COVID-19
Docket No. 2020-106-A

Dear Ms. Boyd:

Blue Granite Water Company (the "Company" or "Blue Granite") files this response to the letter filed by the Consumer Advocate on August 7, 2020 in Docket No. 2019-290-WS, which relates to the Company's response to COVID-19, as well as the Company's implementation of rates under bond. First, the Company has documented the efforts it has undertaken and continues to undertake to protect customers from the impact of COVID-19 in Docket No. 2020-106-A. Second, the Company does not believe that the clarification or actions sought by the Consumer Advocate as related to the Company's rates under bond are appropriate, warranted, or lawful. The record in Docket No. 2019-290-WS is complete, the Consumer Advocate was a party to that proceeding, and the questions the Consumer Advocate poses are answered therein. Further, pursuant to the Commission's regulations, any party's response to the Company's motion for approval of its bond was due on or before June 18, 2020; the Consumer Advocate offered no response to that motion and should not be allowed to interpose an objection now after the Commission has approved the Company's request.

Actions in Response to COVID-19

While the Company recognizes that the Consumer Advocate has not participated in Docket No. 2020-106-A—a proceeding related to the protection of customers and to modifications to utility operations during the COVID-19 pandemic—the Company would refer the Consumer Advocate to filings made by the Company in that docket on March 19, 2020, March 23, 2020, March 25,

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2020, March 30, 2020, May 22, 2020, May 26, 2020, June 30, 2020, as well as the live recording of the virtual forum held on May 27, 2020, for which the Company was an active participant.[1]

Recognizing the impacts of the COVID-19 pandemic on customers, the Company voluntarily delayed the implementation of increased rates until September 1, 2020, a delay of nearly five months after the Commission's issuance of an order on the Company's application. This significant, voluntary delay of implementation has meant the Company forgoing approximately $2 million of revenues from customers to the Company. Additionally, to its knowledge, Blue Granite was the first utility in South Carolina to suspend nonpayment disconnections, an accommodation it initiated on March 10, 2020, several days before Governor McMaster issued Executive Order No. 2020-08 and requested that utilities suspend nonpayment disconnections, and more than a week before the Commission issued Order No. 2020-228 effectuating same. The Company also suspended its collection processes and the assessment of late charges effective March 10, 2020, and reconnected those customers shut off for non-payment back to March 1, 2020. Additionally, the Company has continued its practice of referring customers who are unable to make payment to assistance agencies, as well as continuing to establish long-term payment arrangements for customers who fall behind on bills. While each of these measures has benefitted customers, they have also caused the Company to incur additional costs.[2]

Finally, through Order No. 2020-374 issued on May 14, 2020 in Docket No. 2020-106-A, the Commission acknowledged Governor McMaster's request that utilities begin to return to normal business operations. To that end, the Commission rescinded its waivers related to the termination of utility service and vacated its previous order "that directs all regulated utilities to suspend disconnection of service during the COVID-19 State of Emergency." The Commission should not now single out Blue Granite for special accommodations, particularly in light of the actions the Company continues to take for the benefit of customers.

The Implementation of Rates Under Bond

The answers to the Consumer Advocate's questions concerning rates under bond can be found in the Company's filings in Docket No. 2019-290-WS and at S.C. Code Ann. § 58-5-240(D), which provides that a utility may put rates into

[1] A live recording the virtual forum is available here: https://cdnapisec.kaltura.com/index.php/extwidget/preview/partner_id/954571/uiconf_id/35803241/entry_id/1_ckwoiim5/embed/dynamic.

[2] In addition to the foregone $2 million, as noted in the Company's filing in Docket No. 2020-106-A on June 30, 2020, the Company had incurred an additional $93,898 in net costs for the period from March 1, 2020 to May 31, 2020 as related to its response to the COVID-19 pandemic, and the Company has continued to incur these net costs.

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effect under bond during the appeal of the Commission's decision, so long as the bond is "in a reasonable amount approved by the Commission, with sureties approved by the Commission." As the Consumer Advocate is aware, the Commission provided such approval in a 6-0 vote at its July 15, 2020 business meeting, and such approval was memorialized in a directive issued on the same day.

The suggestion that the Commission could delay the Company's implementation of new rates via S.C. Code Ann. §§ 58-5-320 or 58-5-290 is wrong as a matter of law. The orderly process for implementing new rates was set forth by the General Assembly in S.C. Code Ann. § 58-5-240, and is the process in which the Consumer Advocate participated. That statute also provides for the Commission's review of the bond amount and surety, and, as the Commission has repeatedly concluded:

> The Commission is **without discretion** to prohibit the utility from imposing its proposed rates under an appropriate bond. The statute . . . allows the utility to impose its proposed rates under bond as a matter of right where the utility demonstrates that the surety and the bond are sufficient to ensure that the ratepayers will be reimbursed with interest for overcharges in the event the utility's appeal is ultimately unsuccessful.

Order No. 2008-269 at 3-4, Docket No. 2007-286-WS (Apr. 25, 2008) (emphasis added); Order No. 2010-543 at 3- 4, Docket No. 2009-479-WS (Aug. 12, 2010); Order No. 2016-156 at 4, Docket No. 2014-346-WS (Mar. 1, 2016). The Commission's role in reviewing the details of the bond—the amount and the surety—is ultimately ministerial in nature, and it could be *ultra vires* for the Commission to act beyond the limits of this ministerial duty. The statute at bar—S.C. Code Ann. § 58-5-240(D)—provides an established right to utilities and carries an implied duty that the Commission will timely decide whether the bond amount is reasonable and the surety is acceptable, and the Commission made such a determination at its July 15, 2020 business meeting. If ever there was one, this is such a case in which "[i]t is the positive duty of the commission to decide matters properly submitted within its jurisdiction without unreasonable delay." *City of Columbia v. Pearman*, 180 S.C. 296 (1936).

The purpose of putting rates into effect under bond is to establish the necessary balance between protecting the customer's right to fair and reasonable rates and protecting the utility's need to receive revenues that support its investment. The U.S. District Court in South Carolina and the U.S. Supreme Court have weighed in on these issues. In *United Gas Pipeline Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958) (*United Gas Pipeline*), the U.S. Supreme Court found the following as related to the utility's implementation of rates under bond under a similar federal statute:

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> It seems plain that Congress, in so drafting the statute, was not only expressing its conviction that the public interest requires the protection of consumers from excessive prices for natural gas, but was also manifesting its concern for the legitimate interest of natural gas companies in whose financial stability the gas-consuming public has a vital stake. Business reality demands that natural gas companies should not be precluded by law from increasing the prices of their product whenever that is the economically necessary means of keeping the intake and outgo of their revenues in proper balance; otherwise procurement of the vast sums necessary for the maintenance and expansion of their systems through equity and debt financing would become most difficult, if not impossible.

358 U.S. 103, 113. In *Holt v. Yonce, Chairman of the S.C. Public Service Commission*, 370 F.Supp. 374 (D. S.C. 1973) (*Holt*), affirmed by the Supreme Court at 94 S.Ct. 1553 (1974), the Court was likewise faced with a challenge to the statutory allowance of permitting utilities to put rates into effect under bond, in that case involving South Carolina Electric & Gas ("SCE&G"). The Court relied upon *United Gas Pipeline*, finding that, while rate increases may be difficult for certain customers, such increases "make possible expanded utility service to all who need it." 370 F.Supp. 374, 379. The Court in that case rejected the plaintiffs' challenge.

As described above, the Company has already foregone substantial revenues in its efforts to make accommodations for customers. It should not now be penalized for these efforts because of the comments filed by an intervenor weeks after the Commission has approved the Company's bond and months after the intervenor's response to the Company's motion was due. The Company recognizes that, pursuant to S.C. Code Ann. § 37-6-604(C), the Consumer Advocate's role before the Commission is "to advocate for the interest of consumers" before the Commission. The Company encourages the Consumer Advocate and the Commission to also consider the financial viability of utilities in South Carolina. Consumers can only receive reliable utility services if utilities are made whole for the investments they make in the state's infrastructure and given a reasonable opportunity to recover their prudently incurred costs. Ultimately, the Company's implementation of new rates is necessary for the continued reliable provision of service to its customers.

As to the Consumer Advocate's apparent confusion related to the Company providing prior notice to customers of the rate change, the Commission accepted Blue Granite's concession to delay putting new rates into effect until September 1, 2020, and ordered that Blue Granite provide 30-days' advance notice to its customers of the rate increase. *See* Order Nos. 2020-260 and 2020-306. The Consumer Advocate did not seek rehearing of those orders, and in providing timely advance notice to customers of the September 1, 2020 rate increase, Blue Granite has merely complied with the Commission's directives.

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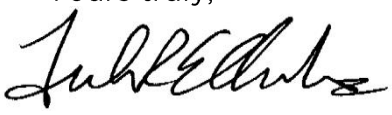
Further, the Company's motion for approval of the bond, along with the rates it intends to implement, were filed on June 8, 2020 and served on the Consumer Advocate on the same day. Pursuant to S.C. Code Ann. Regs. 103-829(A), the Consumer Advocate's response to the Company's motion would have been due on June 18, 2020, and the Consumer Advocate filed no response. The Consumer Advocate cannot now, some two months later and after the Commission has approved the bond, disrupt the orderly process set forth by the General Assembly and the Commission's regulations.

Yours truly,



Frank R. Ellerbe, III

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cc: Parties of Record (via email)
Donald H. Denton, President (via email)
Dante Destefano, Financial Planning & Analysis Manager (via email)